

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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|----------------------------|---|--------------------------|
| In re Application of: |) | Art Unit: |
| FRESKGARD, et al. |) | Examiner: |
| Serial No.: 10/589,551 |) | Washington, D.C. |
| Filed: August 16, 2006 |) | September 4, 2008 |
| For: METHOD FOR ENRICHMENT |) | Docket No.: FRESKGARD=10 |
| INVOLVING ELIMINATION BY |) | |
| MISMATCH HYBRIDISATION |) | Confirmation No.: 8526 |

PETITION TO VACATE ERRONEOUS HOLDING OF ABANDONMENT

U.S. Patent and Trademark Office
Customer Service Window
Randolph Building
401 Dulany Street
Alexandria, VA 22314

S i r :

Applicants petition the Commissioner to exercise supervisory authority under 37 CFR 1.181 and vacate the erroneous holding of abandonment set forth in the notice of abandonment mailed August 22, 2008. This is believed to be a "no-fee" petition, but if a petition fee is due, please charge it to deposit account 02-4035 and notify the undersigned.

1. On August 16, 2006, Applicants requested entry of this case into the national phase, and paid the basic national fee set by 37 CFR 1.492(a).

2. On April 16, 2007, applicants were mailed a Notification of Missing Requirements, which required, inter alia, the paper and CRF forms of the sequence listing, and the supporting statement.

3. On September 17, 2007, Applicants filed a response to the NMR. The response included, inter alia, a paper sequence listing (54 pp.), a CRF (3.5" disk), and a paper entitled "Response to 'Sequence Listing' Requirement". The latter directed the entry of the sequence listing, and made the statements required by 37 CFR 1.821 et seq.

4. Enclosed herewith as exhibit A is our receipt for the September 17, 2007 filing, stamped by OIPE. Note that the boxes

"Sequence Listing", for the paper copy, and "With Disk", for the CFR, are checked off.

5. Inspecting PAIR, we see that the PTO acknowledges receipt of the 54 pp. sequence listing and the statement that paper and CRF are the same.

6. The Notification of Abandonment states

Applicant has failed to properly respond to notification of missing requirements mailed 04/16/07, regarding sequence requirement. According to STIC, as of 08/07/08, a transfer request was filed on 09/17/07. No transfer request was found in application. No CRF has been file [sic].

7. The reference to a "transfer request" is not understood. While our form response has a place for requesting transfer of the CRF from a prior application, the appropriate box was not checked off. Rather, applicants stated that they "hereby submit... the Sequence Listing in computer readable form...."

8. Exhibit A constitutes clear and convincing evidence that the CRF was timely received by the PTO. Hence, the holding of abandonment should be vacated.

9. To expedite prosecution, we are e-filing herewith a replacement CRF (TXT file), to replace the CRF apparently lost by the PTO after it was filed.

The undersigned attorney or agent hereby states as follows:

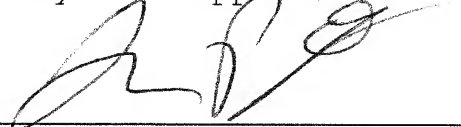
- (a) this submission does not include new matter [§1.821(g)];
- (b) the contents of the paper copy (as amended, if applicable) and the computer readable form of the Sequence Listing, are the same [§1.821(f) and §1.825(b)];
- (c) if the paper copy has been amended, the amendment is supported by the specification and does not include new matter [§1.825(a)]; and
- (d) if the computer readable form submitted herewith is a substitute for a form found upon receipt by the PTO to be damaged or unreadable, that the substitute data is

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identical to that originally filed [§1.825(d)].

Respectfully submitted,

BROWDY AND NEIMARK, P.L.L.C.
Attorneys for Applicant

By: 
Iver P. Cooper
Reg. No. 28,005

Enclosures

- Exhibits A and B
- CRF

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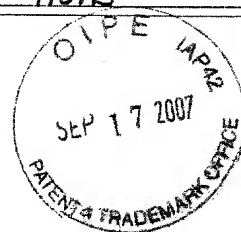
Exhibit A

APPLICATION/PATENT NO: 10/589,551
DOCKET NO: FRESH GARD = 10

CONF. NO.: 8526
CLIENT CODE: H01B

THE PATENT AND TRADEMARK OFFICE STAMP
HEREON ACKNOWLEDGES RECEIPT OF THE
FOLLOWING PAPERS:

- ☒ FEES \$ 1355.00 PTO FORM 2038
☒ EXTENSION OF TIME (3 MONTHS)
☐ TRANSMITTAL LETTER
☒ MISSING PARTS RESPONSE WITH DECL
☒ AMENDMENT/RESPONSE (circle one)
☒ PRELIMINARY ☐ SUPPLEMENTAL
☐ APPLICATION DATA SHEET
☐ RESTRICTION/ELECTION REPLY
☒ SEQUENCE LISTING ☒ WITH DISK
☐ RCE TRANSMITTAL
☐ REQUEST FOR STATUS
☐ NOTICE OF APPEAL
☐ APPEAL BRIEF/REPLY BRIEF (TRIPPLICATE)
☐ REQUEST & CERTIFICATE OF CORRECTION
☐ OTHER _____



- ☐ ASSIGNMENT
☐ INFORMATION DISCLOSURE STATEMENT
☐ FORM SB08A & _____ PATENTS/PUBS
☐ PRIORITY DOCUMENT(S) NO. _____
☐ DECLARATION UNDER § _____
☐ _____ SHEETS OF FORMAL DRAWINGS
☐ ISSUE FEE TRANSMITTAL FORM
☐ PUBLICATION FEE
☐ MAINTENANCE FEE LETTER

10/589,551

Method For Enrichment Involving Elimination By Mismatch Hybridisation

09-02-

2008::12:44:42

This application is officially maintained in electronic form. To View: Click the desired Document Description. To Download and Print: Check the desired document(s) and click PDF.

Bibliographic Data

| Mail Room Date | Document Code | Document Description | Document Category | Page Count |
|----------------|---------------|---|--------------------|------------|
| 08-22-2008 | ABN | Abandonment | PROSECUTION | 1 |
| 09-17-2007 | PEFR | Applicant Response to Pre-Exam Formalities Notice | PROSECUTION | 4 |
| 09-17-2007 | OATH | Oath or Declaration filed | PROSECUTION | 2 |
| 09-17-2007 | A.PE | Preliminary Amendment | PROSECUTION | 1 |
| 09-17-2007 | CLM | Claims | PROSECUTION | 9 |
| 09-17-2007 | REM | Applicant Arguments/Remarks Made in an Amendment | PROSECUTION | 1 |
| 09-17-2007 | CRFS | CRF Statement Paper and CRF are the same | PROSECUTION | 4 |
| 09-17-2007 | SEQLIST | Sequence Listing | PROSECUTION | 54 |
| 04-16-2007 | M905 | Notice of DO/EO Missing Requirements Mailed | PROSECUTION | 3 |
| 02-26-2007 | ADS | Application Data Sheet | PROSECUTION | 4 |
| 08-16-2006 | TRNA | Transmittal of New Application | PROSECUTION | 2 |
| 08-16-2006 | SPEC | Specification | PROSECUTION | 150 |
| 08-16-2006 | CLM | Claims | PROSECUTION | 20 |
| 08-16-2006 | ABST | Abstract | PROSECUTION | 2 |
| 08-16-2006 | DRW | Drawings-only black and white line drawings | PROSECUTION | 4 |
| 08-16-2006 | WFEE | Fee Worksheet (PTO-06) | PROSECUTION | 1 |
| 08-16-2006 | 371P | Documents submitted with 371 Applications | PROSECUTION | 2 |
| 08-16-2006 | ABST | Abstract | PROSECUTION | 2 |
| 08-16-2006 | SPEC | Specification | PROSECUTION | 148 |
| 08-16-2006 | CLM | Claims | PROSECUTION | 20 |
| 08-16-2006 | DRW | Drawings-only black and white line drawings | PROSECUTION | 4 |
| 08-16-2006 | ABST | Abstract | PROSECUTION | 2 |
| 08-16-2006 | P.210.IN | Incoming ISR, 237 & References from IB | PROSECUTION | 3 |
| 08-16-2006 | FRPR | Certified Copy of Foreign Priority Application | PROSECUTION | 117 |
| 08-16-2006 | FRPR | Certified Copy of Foreign Priority Application | PROSECUTION | 118 |
| 08-16-2006 | 371P | Documents submitted with 371 Applications | PROSECUTION | 1 |

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